IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.52215 of 2007
KUMAR DHIRAJ @ BABLOO
Versus
STATE OF BIHAR

For the petitioner : M/S S.N.P.Sinha, Sr.Advocate, and L.B.Singh, Advocate
For the State : Mr.Jharkhandi Upadhaya, A.P.P.

O R D E R

This application on behalf of the petitioner whose name appears to have cropped up in course of the investigation is for the quashing of the order dated 28.3.2007 passed by the learned IXth Additional Sessions Judge, Patna, in Sessions Trial No.923 of 2006 arising out of Gardanibagh(Shashtrinagar) P.S.Case no.991 of 2005 whereby he has framed charge against the petitioner under Section 302/34 I.P.C. and Section 27 of the Arms Act.

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The prosecution case based on the fardbeyan of Havildar Basant Narayan Tiwari, briefly is to the effect that at about 4.30 P.M. on 22.12.2005 on receipt of information that some criminals had shot dead a person in Keshrinagar Bank Colony, he proceeded to the spot for verification and found a person, aged about 25-26 years, lying on the ground by the side of a Bajaj Pulsar motorcycle bearing registration no.BR-1X-7121. He was unconscious and blood was oozing from a wound on the right temporal region and a Nokia Mobile Phone Set, a helmet and a purse lay scattered on the ground. The informant learnt from the people gathered at the spot that the injured person was coming on his motorcycle from the side of Baba Chowk when two persons

astride a motorcycle overtook him and fired at him as a result whereof he fell down and the assailants fled away without taking anything from the injured. The injured was removed to the P.M.C.H. where he was pronounced to be dead. The purse and driving license revealed the identity of the deceased as Ritesh Kumar Sinha.

On the basis of the said fardbeyan the aforesaid Gardanibagh (Shashtrinagar) P.S.Case was registered against two unknown motorcycle riding criminals under Section 302/34 I.P.C. and 27 Arms Act and after due investigation a chargesheet thereunder was submitted in Court against the petitioner only.

It appears that in course of investigation, it was revealed from the mobile phone set found lying at the place of occurrence that a call had been received shortly before the incident from mobile phone no.9334102187 which was found to be recorded in the name of one Sumit Kumar of 273, North Sri Krishnapuri, Patna -13 .However, curiously, both the said Sumit Kumar and the address given appear to be non-existent. It was also revealed during the investigation from the print out that mobile no.9334102187 had received several calls from the mobile set of the petitioner bearing the number 9334275055. It also came to light that deceased Ritesh was given to borrowing and extorting money from others and had once also staged a drama of being kidnapped. It was suspected that Ritesh had been summoned to the spot through Sumit's mobile set and shot dead possibly in view of some bad money transactions or debts.

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It has been submitted on behalf of the petitioner that except for

the several calls made to the mobile set of the said Sumit Kumar , there was nothing in the whole of the case diary against the petitioner who runs a P.C.O/S.T.D. Booth at Mahesh Nagar, Patna . It was further submitted that none of the persons examined in course of the investigation have stated anything against the petitioner and notwithstanding the same the police had submitted a charge sheet only against the petitioner after holding a perfunctory investigation where no real efforts were made to trace out the real culprits or find the true facts.

It appears that the petitioner had initially moved a petition for his discharge which was dismissed vide order dated 23.3.2007.

It is by now well settled by a catena of decisions of the Apex Court as also this Court that at the stage of 227 and 228 Cr.P.C. which are to be read in juxtaposition , the truth, veracity and effect of evidence which the prosecution proposes to adduce are not to be meticulously examined or evaluated . What is required to be seen at this stage is whether there is some material for proceeding against the accused. Suspicion founded upon the materials before the court which leads him to form a presumptive opinion as to the existence of factual ingredients constituting the offence alleged may justify the framing of charge. The question whether the case will end in conviction or acquittal cannot be made the basis for the framing of the charge at this stage.

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The petitioner did not challenge the order dated 23.3.2007 rejecting his prayer for discharge and allowed the same to attain finality.

Through this application the petitioner seeks to challenge the order framing charge against him by invoking the inherent power of this

Court.

The Apex Court in the decision of State of M.P. –Vrs. S.B.Johari , reported in (2000) 2 SCC 57 adverting to the question of charges in the light of the provisions contained in Sections 227,228,401,397 and 482 Cr.P.C. did not favour the approach of the High Court in meticulously examining the materials on record for coming to the conclusion that the charge could not have been framed for a particular offence. The Apex Court while quashing and setting aside the order passed by the High Court made the following observations:

> "------After considering the material on record , learned Sessions Judge framed charge as stated above. That charge is quashed by the High Court against the respondents by accepting the contention raised and considering the details of the materials produced on record. The same is challenged by filing these appeals.
>
> In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons record by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be

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framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial--------"

Judged in the light of the settled position of law as reiterated in the aforesaid decision, the order under challenge does not call for any interference.

Then again in Stree Atyachar Virodh Parishad -Vrs. Dilip Nathumal Chordia reported in (1989) 1 SCC 715 the Apex Court sounded a word of caution

"------ Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice which stares the court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed"

For the reasons stated above, I find no merit in this application which is dismissed accordingly.

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(Abhijit Sinha, J)

Patna High Court,Patna
Dated : the 26th September,2008
Nawal Kishore Singh/ A.F.R.